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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,152	11/02/2000	Martin Hering	17857.4	4568

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07/19/2004

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EXAMINER

STRIMBU, GREGORY J

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/705,152

Applicant(s)

HERING, MARTIN

Examiner

Gregory J. Strimbu

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 62, 64-66 and 86-93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 62, 64-66 and 86-93 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Claim Rejections - 35 USC § 112

Claims 87 and 91-93 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an arm" on line 3 of claim 87 render the claims indefinite because it is unclear if the applicant is referring to the arm set forth above or is attempting to set forth another arm in addition to the one set forth above. Recitations such as "thereby" on line 16 of claim 87 render the claims indefinite because it is unclear if the applicant is referring to the sleeve or the alternate sleeve.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 62, 64-66 and 86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison et al. in view of Nica. Harrison et al. discloses a turnstile (not generally numbered, but seen in figure 1) defining a passageway (not shown, but see lines 1-19 of column 1), the turnstile having an arm 3 movable into the passageway for blocking passage of a person passing therethrough, the arm movable out of the passageway for permitting passage therethrough, the arm having an outside surface (not numbered, but best seen in figure 5), a sleeve 27 easily slidable onto and off the

arm, advertising 30 carried by the sleeve, wherein the advertising covers a substantial portion of the sleeve and is positioned for viewing by the person passing through the passageway when the arm is positioned therein, a collar 28, each of the arms carries different indicia as shown in figure 2. Harrison et al. is silent concerning the arm having a generally circular outside surface in cross section and the sleeve encircling a substantial portion of the arm.

However, Nica discloses a turnstile comprising arms 18 each having a generally circular outside surface in cross section and sleeves 68 encircling a substantial portion of the arm outside surface defined by the generally circular cross section.

It would have been obvious to one of ordinary skill in the art to provide Harrison et al. with tubular arms and tubular sleeves, as taught by Nica, to improve the aesthetic appearance of the turnstile.

Additionally, the manufacture of the apparatus disclosed by Harrison et al. in view of Nica would inherently lead to the method steps recited in claims 62-85.

Response to Arguments

Applicant's arguments filed April 26, 2004 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning Harrison et al., the examiner respectfully disagrees. Figure 5 of Harrison et al. shows the advertising 30 covering a substantial portion of the sleeve 27. In other words, the advertising 30 covers the horizontally extending face of the sleeve 27 which comprises a substantial

portion of the sleeve. Therefore, Harrison et al. teaches providing a sleeve 27 with advertising such that the advertising covers a substantial portion of the sleeve 27. It should be noted that Nica teaches encircling a substantial portion of a circular arm of a turnstile with a sleeve. Thus, the combination of the teachings of Harrison et al. and Nica would lead to the applicant's claimed invention.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is well known in the art to provide turnstiles with generally cylindrically shaped arms to give the turnstile an aesthetically appealing appearance and to reduce the amount of injuries/discomfort to people using the turnstile. Merely "updating" the old turnstile construction of Harrison et al. is well within the grasp of one with ordinary skill in the art.

Finally, the applicant's "evidence" of success is not persuasive. Establishing a long felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. Thus, the need must have been a persistent one that was recognized by those of ordinary skill in the art. See *In re Gershon*, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967). The declaration of Martin Hering and the exhibits A-Q fail to provide any evidence that an art recognized problem existed in the art for a long period of time without solution. While fulfillment of a long felt need is some evidence of non-obviousness, it is not necessarily conclusive

evidence. See *Leinoff v. Louis Milona & Sons, Inc.*, 726 F.2d 734, 220 USPQ 845 (Fed. Cir. 1984). Finally, it should be noted that none of the evidence presented by the applicant addresses the combination of the teachings of Harrison et al. and Nica.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a long horizontal flourish extending to the right.

Gregory J. Strimbu
Primary Examiner
Art Unit 3634
July 13, 2004